

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

REGULATORY - PLANNING COMMITTEE

10 January 2022

**Report of the Director of Legal and Democratic Services
Review of prioritisation of applications to register land as a town or
village green**

1. Purpose

- 1.1 To inform the Committee of a change in case law affecting applications to register land as a town or village green (TVG) and consequential amendments to the scheme of prioritisation employed in relation to such applications.

2. Information and Analysis

- 2.1 Applications to register land as a town or village green (Applications) are dealt with in accordance with provisions of the Commons Registration Act 1965 or the Commons Act 2006, dependent upon the legislation in force at the date of receipt of the Application and also in accordance with the Growth and Infrastructure Act 2013.
- 2.2 In light of the recent Supreme Court judgment in Lancashire County Council v Secretary of State for the Environment, Food and Rural Affairs [2019] UKSC 58 (Lancashire), registration authorities should now consider, where land subject to a TVG Application is held by a public body for statutory purposes, whether registration as a TVG would be incompatible with the statutory purposes for which the land is held. Essentially the case law prevents the registration of land as TVG where it is shown that such registration would be incompatible with the statutory purposes for which land is held.

Priorities

2.3 It has been the County Council's practice to prioritise Applications in accordance with a scheme of priorities presented to the Regulatory Licensing and Appeals Committee on 9 September 2013 which updated the previous scheme authorised on 28 February 2005 in light of the Growth and Infrastructure Act 2013. This provided that the registration authority would prioritise Applications broadly as follows:

Priority 1 - where the Application Land becomes subject to planning permission, a development plan or neighbourhood development plan or some other trigger event specified in relation to section 15C of the Commons Act 2006 and it is known that the developer would be proceeding to undertake the development but for the Application;

Priority 2 – where the Application Land becomes subject to an application for planning permission or becomes subject to planning permission, a development plan or neighbourhood development plan, or some other trigger event specified in relation to section 15C of the Commons Act 2006 but the start of works is not imminent;

Priority 3 – where the status of the land needs to be determined to enable the provisions of a Local Plan to be finalised or the Application Land becomes subject to consultation on a development plan or neighbourhood development plan;

Priority 4 – where the land is akin to a “traditional village green” and there is unlikely to be any objection to the Application;

Priority 5 – other Applications, for example to protect land from future development.

2.4 The Council currently has several TVG Applications awaiting determination which under the current prioritisation scheme are considered low priority but where the land subject to the application is owned by a public body.

2.5 Due to the *Lancashire* judgment, and in particular the impact that statutory incompatibility may have on the determination of some TVG Applications, it is suggested it would be prudent to review all the Council's outstanding TVG Applications and where there is a potential statutory incompatibility, to determine those Applications ahead of other Applications allocated as Priority 2, 3, 4 and 5.

- 2.6 If Committee were minded to agree to the suggestion then the scheme would be amended by inserting the following priority 1B level to read as follows:

Priority 1 - where the Application Land becomes subject to planning permission, a development plan or neighbourhood development plan or some other trigger event specified in relation to section 15C of the Commons Act 2006 and it is known that the developer would be proceeding to undertake the development but for the Application;

Priority 1B – Applications where the subject land is owned by a public body and therefore statutory incompatibility may prevent the registration of land as a TVG

Priority 2 – where the Application Land becomes subject to an application for planning permission or becomes subject to planning permission, a development plan or neighbourhood development plan, or some other trigger event specified in relation to section 15C of the Commons Act 2006 but the start of works is not imminent;

Priority 3 – where the status of the land needs to be determined to enable the provisions of a Local Plan to be finalised or the Application Land becomes subject to consultation on a development plan or neighbourhood development plan;

Priority 4 – where the land is akin to a “traditional village green” and there is unlikely to be any objection to the Application;

Priority 5 – other Applications, for example to protect land from future development.

3. Consultation

- 3.1 No consultation is required

4. Alternative Options Considered

- 4.1 Do nothing. If the scheme of prioritisation is not revised then the Council, as Registration Authority, would be unable to expedite the determination of Applications where statutory incompatibility potentially precludes registration of the Application Land as a TVG and this option should therefore be rejected.

5. Implications

5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

6.1 None identified.

7. Appendices

7.1 Appendix 1- Implications.

8. Recommendation(s)

That Committee notes the report and approves the amendment to the current scheme of prioritisation proposed by the Director of Legal Services.

9. Reasons for Recommendation(s)

9.1 The above recommendation would allow the Council to determine TVG Applications that are potentially affected by the *Lancashire* decision regarding statutory incompatibility which would in turn help to reduce a substantial backlog in the determination of TVG Applications.

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Appendix 1

Implications

Financial

1.1 All likely expenditure to be incurred will be met from the existing budget.

Legal

2.1 The Supreme Court judgment in Lancashire County Council v Secretary of State for the Environment, Food and Rural Affairs [2019] UKSC 58 held that the rights which TVG registration conferred on local residents to use the land for recreation in perpetuity were incompatible with the use of any of the land for education purposes, including for example construction of new school buildings or playing fields. It was not necessary for Lancashire County Council to show that the land was currently being used for such purposes, only that land is held for such statutory purposes (see Lancashire [para 65] which states It is not necessary for LCC to show that they are currently being used for such purposes, only that they are held for such statutory purposes (see Newhaven, para 96).). Similar points arose in relation to land owned by the NHS.

Human Resources

3.1 None associated with this report

Information Technology

4.1 None associated with this report

Equalities Impact

5.1 None associated with this report.

Corporate objectives and priorities for change

6.1 *None associated with this report.*

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 In preparing the Report the relevance of the following factors as far as they are not covered by the Report has been considered: social value, environmental, health, personal and property considerations, the prevention of crime and disorder, equality of opportunity.